

Filed for intro on 02/02/95
House Bill _____
By _____

Senate No. SB1375
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AN ACT to amend Tennessee Code Annotated, Title 2, relative to ethics.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, is amended by adding Sections 2 through 9 of this act as a new chapter.

SECTION 2. Pursuant to this act, the following shall be considered ethical guidelines:

(a) No member or staff shall accept anything of value when the thing is offered with the understanding that official action will be taken or withheld by a member or staff member in consideration of acceptance of that which is offered. Any offer made which is conditioned upon the taking or withholding of official action shall immediately be reported in writing to the committee created pursuant to this act.

(b)(1) Legislators and legislative employees who receive an offer which reasonably appears to have been intended to improperly influence legislative, administrative or political action, shall firmly and unequivocally reject the offer and caution the person making it about a possible violation of undue influence and bribery laws.

(2) If the attempt to improperly influence is clear, the matter shall be reported to law enforcement authorities.

(3) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

(c)(1) No legislator or legislative employee shall seek, accept, use, allocate, grant or award public funds for any purpose other than a purpose approved by law, nor shall any person make any false statement in connection with a claim, request or application for compensation, reimbursement or travel allowances from public funds.

(2) No legislator or legislative employee shall use or seek to use any legislative employee on government time to perform personal services or assist in any private activity not directly related to the official duties of the legislator or legislative employee.

(3) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(d)(1) Members and staff members shall avoid financial conflicts of interest and close economic associations where official actions or decisions are motivated not by public duty but by economic self-interest or association. Financial conflicts of interest and close economic associations which impede official public responsibility are those financial interests or interests arising from close economic associations with other persons or entities which are so material, direct, distinct, unique, and peculiar to the member or staff member that it might be reasonably expected that impartial official judgment could not be executed.

(2) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(e) No member or employee of the general assembly shall unlawfully use his or her office or official position for personal financial gain, and each member or employee shall be entitled to compensation for official duties only to the extent of pay and allowances attaching to such office or position or as is otherwise permitted by law. Nothing herein shall be construed to prevent a member or employee from lawfully pursuing a business or profession or to limit ordinary and necessary communications in the pursuit thereof while serving in an official capacity.

(f)(1) No member of the general assembly or employee of the general assembly shall be allowed to engage in campaign fund raising during the legislative session. Any event given for a member or in honor of a member for which a fee is assessed shall be considered a fund raising event.

(2) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(g) No member shall vote on or influence legislation if such member has a personal interest which is in conflict with the proper discharge of such member's duties unless full disclosure is made in accordance with the provisions of Tennessee Code Annotated, Title 8, Chapter 50, Part 50.

(h) General assembly members shall refrain from using governmental positions to attain personal gain.

(i) No member or employee of the general assembly shall use public resources or personnel services for the purpose of conducting personal or private business activity. It is understood that public service may require members and staff to be away from their homes, businesses, associates, and business interests. Nothing herein is intended to limit ordinary and necessary communications which members and staff must conduct while serving in their public capacities.

(j) Members shall not seek, use, accept, allocate, grant or award public funds for any purpose other than those approved by law.

(k)(1) No member or staff member shall solicit a campaign contribution in a state office building. Members shall not operate political campaigns or operate political fund raising campaigns from state office buildings which have not been leased or rented for such purposes.

(2) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(l)(1) No member shall not agree to or threaten to withhold political action or constituent services as a result of a person's decision to provide or not to provide a political contribution, charitable contribution or support of any kind.

(2) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(m) No member or staff member, acting as an attorney or representative of another, shall seek or accept any special treatment not otherwise approved by law or judicial order because of such member or staff member's legislative role.

(n) No member or staff member shall seek, accept or retain employment which makes it unreasonably difficult to fulfill legislative obligations, requires the disclosure or use of nonpublic or confidential information acquired in the course of legislative service; requires improper use of government relationships or the prestige associated with legislative offices; or will require the member or staff member to compromise any other ethical or legal duty.

(o)(1) Members and staff members shall not knowingly engage in conduct that violates rights of others nor shall they unlawfully discriminate against or abuse any person in the course of legislative activities. All contact with constituents, staff, lobbyists, representatives of the media, and others interested or involved in the process of government shall be conducted in a courteous, professional manner.

(2) In addition to all civil remedies authorized under Section 9, violation of this subsection is a Class A misdemeanor.

(p) No member or staff shall knowingly use improper artifices or schemes to circumvent the clear purpose of laws or this act.

SECTION 3. (a) There is hereby created the select joint committee on ethics. The select committee shall consist of eighteen (18) members. Nine (9) senators shall be appointed by the speaker of the senate. Nine (9) representatives shall be appointed by the speaker of the house of representatives. During the organizational session of each general assembly, the respective speakers shall reappoint or appoint members to serve on the select committee on ethics. Any vacancies occurring on the select committee, between organizational sessions, shall be filled by the respective speakers.

(b) (1) The select committee shall meet at least quarterly and at the call of the chair. Members of the select committee shall be entitled to reimbursement for their expenses in attending meetings of the committee or any subcommittee thereof at the same rates and in the same manner as when attending the general assembly.

(2) The committee shall elect from its membership a chair, a vice chair, and such other officers as it deems necessary.

SECTION 4. (a) The committee shall have authority to receive and consider complaints relative to alleged violations of the ethics code or statutes or rules governing ethics or conduct investigations relative to such complaints and to hold hearings.

(b) The committee may also conduct investigations if a general assembly member or staff member requests in writing the opinion or advice of the committee with regard to interpretation of this act. The committee shall respond to all such requests in writing within seven (7) days of receipt of such request.

SECTION 5.

(a) A complaint shall be initiated by the filing of a statement alleging a violation of this act with the committee secretary. A complaint may be brought only by a member of the general assembly or a member of the staff of the general assembly.

(b) The complaint shall specifically describe the nature of the alleged violation and the party or parties involved and shall be in writing, signed by the person making the complaint, stating all available facts and shall be made under oath. The secretary of the committee shall

refer the complaint to the chairperson who shall schedule a meeting of the committee to review the complaint. Such investigation shall be conducted using in-house staff and such outside counsel and investigators as the committee deems necessary. The committee shall promptly serve the named respondent with a copy of the complaint. Service of such complaint shall be by personal service or by certified mail, return receipt requested.

(c) The committee may also initiate an investigation on its own initiative by majority vote. In such cases, a majority of the committee shall sign a complaint that specifically describes the nature of the alleged violation and the party or parties involved. The committee shall promptly serve the named respondent with a copy of the complaint and service of such complaint shall be made by personal service or by certified mail, return receipt requested. The member or staff member shall have twenty (20) days after service thereof to respond in writing to the allegations contained in the complaint.

(d) Any complaint brought by or before the committee shall remain confidential until the committee has determined that substantial cause exists that a violation occurred.

SECTION 6. (a) Upon completion of an investigation, a written report detailing the findings shall be prepared and presented to the committee. If the committee does not find that sufficient evidence exists to provide substantial cause to determine that a violation has occurred, it shall dismiss the complaint with notice to the complaining party and the respondent.

(b) If the committee finds substantial cause to determine that a violation has occurred, the committee may negotiate a settlement with the respondent or set the matter for hearing. Any settlement shall be a matter of public record and shall be filed with the committee secretary and shall be made of record in the daily record of the house of the general assembly of which the respondent is a member or an employee. If no settlement is reached, the committee will hold open hearings, taking any relevant evidence that the situation requires.

SECTION 7.

(a) The committee shall have authority to determine the nature and the scope of its investigation and to subpoena witnesses, administer oaths, take testimony, and to require the production of evidence relative to any matter under investigation.

(b) All parties shall have an opportunity to be heard, to subpoena witnesses and require the production of relevant evidence, to secure counsel of such party's choosing, and to examine witnesses who may be called by the committee.

(c) The committee shall assure that all hearings are recorded.

(d) The committee shall have the burden of proof and such burden shall be of clear and convincing evidence.

(e) The committee and the respondent shall have the right to rebuttal.

(f) Upon completion of such hearing, the committee shall issue a report of its findings and recommendations of action. The report and recommended action shall be a matter of public record and shall be filed with the clerk of the appropriate chamber.

SECTION 8. Any person who has been served with a subpoena and willfully fails to appear or any person who appears and willfully refuses to answer any of the committee's questions or refuses to produce evidence requested by the committee, is guilty of contempt and is punishable as provided by Tennessee Code Annotated, Title 3, Chapter 3. Any person who willfully swears or falsely affirms in any material manner or produces false evidence is guilty of perjury and is punishable pursuant to Tennessee Code Annotated, Title 3, Chapter 3. Any person who willfully evades service of a subpoena to appear before the committee is punishable pursuant to Tennessee Code Annotated, Title 3, Chapter 3.

SECTION 9.

(a) Each provision may be enforced in accordance with its terms and by the ethics committee as a civil matter according to the following procedures:

(1) The committee may recommend, and the chamber from which the charged person comes, may order appropriate sanctions designed to fit the

offense and assure both fair treatment of the offender and deterrence to others who might consider similar acts.

(2) The sanctions available include, but are not limited to:

(A) Civil penalties of not more than five thousand dollars (\$5,000) for each offense, or equal to twice the amount improperly gained by the misconduct, whichever is greater;

(B) Divestiture of specified assets or withdrawal from specified relationships;

(C) Detailed disclosure, with or without additional periodic reporting requirements;

(D) Suspension from legislative service with or without pay;

(E) Restitution or reimbursement;

(F) Suspension of pay until orders are complied with;

(G) Forfeiture of pension benefits;

(H) Written reprimand;

(I) Voiding any legislation or other action resulting from conduct in violation of the act;

(J) Censure (a legislator censured shall not serve as a chair or a co-chair on any legislative committee for the remainder of the legislator's pending term in office);

(K) Expulsion of a legislator or dismissal of a legislative employee;

(L) Payment of costs related to the investigation and adjudication of the charge; and

(M) Any other sanction fashioned to achieve the purposes of this act.

(3) Each of the above penalties may be ordered separately or in combination.

(b) Each of the provisions also gives rise to a separate civil action which may be brought by the attorney general or, upon failure of the attorney general to bring an action within sixty (60) days of a written request to do so, by any citizen.

(1) The right to proceed in a separate civil suit is independent of any proceeding conducted by the legislative ethics committee, but to the extent that a civil fine is ordered for any offense, no person shall be fined more than five thousand dollars (\$5,000) for each offense, or twice the amount of the benefit received from the conduct providing the basis of the charge, whichever is the greater.

(2) If it does not jeopardize an action before the committee, cause unfair prejudice to the person charged or violate a legal obligation of confidentiality, information acquired by the committee shall be made available, on request, to litigants in the civil action.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

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